IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7777 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIRMALSINH ALIAS BHAILUBHAI CHANUBHA CHUDASMA ALIAS
Versus
DISTRICT MAGISTRATE

Appearance:
MR PRAVIN GONDALIA for MR YOGESH S LAKHANI
for Petitioner
MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 05/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt. 21/4/2000 (Annexure :A) passed by Respondent No.1 which he passed in exercise of powers

conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "bootlegger" within the meaning of Sec.2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority has placed reliance on one Prohibition Case registered vide CR. No. III/5052/2000 against the detenu in Keshod Police Station on 1/4/2000 which is referred to in the grounds of detention at Annexure : B. He has also placed reliance on statements of six un-named witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, out of said six statements, the detaining authority verified statements of three witnesses on 21/4/2000 and rest of the three statements appear to have been verified by Sub-Divisional Police Officer, Junagadh on 21/4/2000 and on the very day, i.e. on 21/4/2000, the detaining authority passed an order of detention which is challenged in this writ petition.

3. Though Rule has been served upon each respondent,the respondents have not filed affidavit-in-reply in reply to the Writ Petition controverting the grounds mentioned in Memo of this Writ Petition.

4. Shri Pravin Gondalia, the learned advocate for the petitioner has argued that the detaining authority has placed reliance on statements of six witnesses whose identity has not been disclosed by claiming privilege under Sec. 9(2) of the Act. And out of six statements, the detaining authority verified three statements of witnesses on 21/4/2000 and rest of the three statements appear to have been verified by Sub-Divisional Police Officer, Junagadh on 21/4/2000. The detaining authority, on the vert day, i.e. on 21/4/2000, passed an order of detention. Looking to the respective dates of statements, date of verification of said statements and date of passing an order of detention, said claim of privilege is not genuine, and therefore, it violates mandate given in Art.22(5) of the Constitution of India. He has placed reliance on case of KALIDAS CHANDUBHAI KAHAR Vs. STATE OF GUJARAT & OTHERS, reported in 1993(2) G.L.R. 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under Sec.9(2) of the Act. In

this case, from papers of grounds of detention, it appears that he had no time to do such exercise, and therefore, the privilege claimed by him is not genuine. The facts of this present case fall within the four corners of the case cited by Mr.Gondalia.

5. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 21/4/2000 passed by Respondent no. 1 which is at Annexure: A is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 5/10/2000. (H.H.MEHTA,J.)
ccshah